

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Anna Molina-Rodriguez on April 18, 2006

DATED: May 26, 2006

On April 18, 2006, Carolyn Miller, in Willkie Farr & Gallagher LLP's capacity as counsel to the Audit Committee, interviewed Anna Molina-Rodriguez. Ms. Molina-Rodriguez was not represented by counsel at this interview. Also in attendance were Brian Turetsky of Willkie Farr, William Haegele of KPMG, and Raymond Sarola of Willkie Farr & Gallagher LLP. The interview took place in a conference room on the 3rd floor of the City Administration Building in San Diego and lasted approximately two hours.

The following memorandum reflects my thoughts, impressions, and opinions regarding our meeting with Anna Molina-Rodriguez, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Warnings

Ms. Miller began by explaining that the interview would cover information relating to the Audit Committee's investigation. She explained that the information provided by Ms. Molina-Rodriguez may be given to the government or made public in the Audit Committee's report. Ms. Miller explained that she was not Ms. Molina-Rodriguez's lawyer and that their conversation was not privileged. Ms. Miller did ask, however, that Ms. Molina-Rodriguez keep the information discussed in the interview confidential. Ms. Miller asked if Ms. Molina-Rodriguez had any questions, and Ms. Molina-Rodriguez replied that she wanted to know how long the interview would last and who else was being interviewed. Ms. Miller responded that the interview should last less than three hours, and that people in similar positions to Ms. Molina-Rodriguez generally have been asked for interviews.

Background

Ms. Miller asked Ms. Molina-Rodriguez to explain her educational and employment background. Ms. Molina-Rodriguez has a Bachelor's degree in political science and a law degree. She worked as Chief of Staff for an Assemblywoman in Sacramento before law school, and worked at the District Attorney's Office after she graduated. In Summer 2001, she joined the staff of Councilmember Ralph Inzunza as his Chief of Staff.

Ms. Miller asked her if she had spoken to Councilmember Inzunza or anyone else about this interview. Ms. Molina-Rodriguez responded that she has spoken to Councilmember

Inzunza since she left his office. She did not speak to him about, or otherwise prepare for, this interview.

Ms. Miller asked about the role of the Chief of Staff and Ms. Molina-Rodriguez explained that the role of Chief of Staff was generally the same among Council members. The Chief of Staff's responsibilities include managing the staff, making sure they arrive on time and turn in their assignments when due, and supporting the Councilmember. At the time of her service with Councilmember Inzunza, there were approximately eight "Council Representatives" on his staff who had specific assignments, either by Council committee, geographic area, or issue. She stated that Councilmember Inzunza would ask her to personally research and analyze issues that were important to him.

Ms. Miller then inquired about Councilmember Inzunza's interaction with other Council members. Ms. Molina-Rodriguez explained that the Council members worked on the same floor and would occasionally run into each other or stop by each others' offices. Councilmember Inzunza got along better with some Council members, such as Charles Lewis and Michael Zucchet. Ms. Miller asked if Councilmember Inzunza ever had policy discussions outside of Council meetings, and Ms. Molina-Rodriguez replied that he would usually discuss policy issues in informal meetings rather than formal ones. While there was sometimes talk in the hallway regarding policy issues, Ms. Molina-Rodriguez did not recall specific instances or issues.

City Council Procedure

Ms. Miller asked Ms. Molina-Rodriguez to explain how new legislation is initially proposed. She explained that new legislation was usually proposed with a docket entry that would arrive in the office about a week before the vote on that item. Councilmember Inzunza would typically be briefed in writing by his staff concerning docket issues within his district. He was not usually briefed on issues outside his district, unless they involved city-wide ordinances. The docket usually arrived on Wednesday afternoons, but under Mayor Murphy, there were many "supplemental items" on the docket, which would only be noticed the Friday prior to the Monday vote. Ms. Miller asked what kind of items would be added as "supplemental," and Ms. Molina-Rodriguez stated that sometimes they would be those items considered controversial. She stated that it was difficult to brief the Councilmember prior to Monday's vote when only learning about the issue the prior Friday. While there was a procedure to adjourn items if the Council was unprepared for a vote, Ms. Molina-Rodriguez only recalled one time when this occurred.

There were docket briefings on Thursdays, at which the Councilmember's staff could determine the important issues coming up for vote. Ms. Miller asked which staff attended these meetings, and she replied that different staff members attended these meetings depending on who was responsible for the issues to be discussed. City departments would give presentations at these meetings to discuss docket items that involved their departments. These meetings usually included written materials, which were either provided before or during these meetings. Ms. Miller asked if these presentations ever lacked materials, and Ms. Molina-Rodriguez stated that it was very frustrating when she would call departments to request additional information and would not receive a return call until the Monday the item was to be voted upon.

Ms. Miller then asked if Ms. Molina-Rodriguez ever attended Council meetings. She responded that staff usually attended Council meetings, and Ms. Molina-Rodriguez herself would attend if certain constituents from the district were present. Council meetings varied in length, and would sometimes last as late as 10:00 p.m. Ms. Miller asked Ms. Molina-Rodriguez to explain her understanding of why certain Council meetings were held in closed session. Ms. Molina-Rodriguez responded that she learned early on that staff did not discuss Closed Session meetings, and she never spoke with Councilmember Inzunza about them. She did not know why certain Council meetings were closed, but guessed that it might be due to litigation issues. Ms. Molina-Rodriguez stated that while it was possible that staff from other City departments might attend closed session meetings, Council staff never attended. When City departments did not provide Council members with supporting materials in advance of Council meetings, Council members would sometimes bicker about having to vote on an issue they were only informed about an hour earlier. These comments were directed towards the departmental representatives and made during Council meetings.

Manager's Proposal II

Ms. Miller asked if Ms. Molina-Rodriguez recalled discussing MP2 with Councilmember Inzunza. She replied that she did not recall discussing MP2 with him before hearing about it in media sources sometime in 2004. She noted that she was on maternity leave from November 2001 until February 2002. Her only recollection of MP2 was responding to public records requests or subpoenas in or around 2004 and telling the staff to run searches for "pension" and "retirement." Ms. Molina-Rodriguez did not recall any particular briefing memos relating to MP2 and stated that she would only skim memos prepared for Councilmember Inzunza by other staff members because they would be the ones to brief him. Ms. Miller asked if the staff had meetings regarding MP2, and Ms. Molina-Rodriguez replied that if she had been in meetings where MP2 was discussed, she probably would have remembered them. Ms. Molina-Rodriguez did recall a brief written by a member of the Councilmember's staff, Pat Schott, which described a 300 million-dollar underfunding of the pension system. If any of Councilmember Inzunza's staff would know the Councilmember's thoughts concerning MP2, she thought it would be Mr. Schott. He is currently studying for his Master's degree in Washington, D.C.

Ms. Molina-Rodriguez was shown a March 15, 2002 memo from Daniel Kelley (Labor Relations Manager) to the Mayor and City Council, including slides of a PowerPoint presentation concerning the Meet & Confer process (Exhibit 1). Ms. Miller asked if she recalled this presentation or any discussions regarding it. Ms. Molina-Rodriguez stated that she did not recall seeing this presentation or hearing it discussed, and that she did not have a general awareness of pension or CERS funding. In response to a question about the Councilmember's interaction with union presidents, she stated that Councilmember Inzunza's relationship with them was professional rather than personal. Ms. Molina-Rodriguez explained that when a union president would wish to speak to the Councilmember, he/she would call and ask for an appointment, which was usually granted. She mentioned Ron Saathoff, Ms. Cummings and Ms. Italiano as union presidents that she remembered. She would sometimes sit in on meetings between Councilmember Inzunza and union presidents, and once met with Ron Saathoff alone concerning the purchase of additional equipment for firefighters. Ms. Molina-Rodriguez did not recall Mr. Saathoff discussing retirement or health care benefits. Ms. Miller asked Ms. Molina-

Rodriguez her impression of Mr. Saathoff and she described him as a “nice man” and a “zealous advocate for the firefighters.” Ms. Miller asked whether union presidents commented during Council meetings. Ms. Molina-Rodriguez explained that when a union president wanted to speak during Council meetings, he/she had to file a speaker slip with the clerk and was afforded only three minutes like any other member of the public. Ms. Miller asked whether there was anything specific about Councilmember Inzunza’s district that would cause Mr. Saathoff to take a particular interest in Councilmember Inzunza’s office. She responded that she was not aware of any reason why Mr. Saathoff would be particularly concerned with any issues in Councilmember Inzunza’s district and believed that Mr. Saathoff would have called all the Council members with his concerns.

Ms. Miller asked if she was aware that the Council had agreed to indemnify the SDCERS Board. Ms. Molina-Rodriguez replied that she was not aware of this action at the time of the Council’s decision. She heard of this issue later in 2004. This was among “one thousand other issues” at that time and no other issues related to MP2 stuck out in her memory.

Ms. Miller asked if she was aware or involved in any way with Councilmember Inzunza’s own pension. According to Ms. Molina-Rodriguez, Councilmember Inzunza handled his own pension benefits without assistance from his staff. She did recall that Councilmember Inzunza purchased five years of credits because the price was going up. Ms. Molina-Rodriguez and other staff did this as well. Ms. Molina-Rodriguez was shown a series of emails between Lorainne Chapin (SDCERS General Counsel) and Lawrence Grissom (SDCERS Administrator) that reference Mr. Inzunza (Exhibit 2), and was asked to describe Mr. Inzunza’s relationship with Mr. Grissom. She stated that she did not believe that Mr. Inzunza had a special relationship with Mr. Grissom. Ms. Miller asked specifically about Mr. Grissom’s statement in the email referencing “my buddy Inzunza.” Ms. Molina-Rodriguez replied that Councilmember Inzunza had a habit of calling everyone “buddy.”

Blue Ribbon Committee

Ms. Molina-Rodriguez was asked about the Blue Ribbon Committee (“BRC”) and responded that she knew it was established by the Mayor to advise on pension and other financial issues affecting the City. She did not recall when the BRC was created, or whether Councilmember Inzunza ever received a copy of its report. Mr. Soloman, a member of the Councilmember’s staff, wrote a brief about this issue, and there would likely have been a meeting to discuss Mr. Soloman’s research.

Wastewater

Ms. Miller asked if there were any constituent or business groups that were frequent visitors to Councilmember Inzunza’s office. Ms. Molina-Rodriguez stated that many business, community, and social services groups would contact Councilmember Inzunza to lobby him on their issues. Ms. Molina Rodriguez listed the Chamber of Commerce, public relations firms, and law firms among the “regulars.” Ms. Miller asked specifically about efforts by Kelco/ISP to influence Councilmember Inzunza. Ms. Molina-Rodriguez remembered Kelco, but only in relation to “some money they gave to Logan Heights Library” in late 2004 or early 2005. Councilmember Inzunza did not solicit this donation, and Ms. Molina-Rodriguez noted that

Kelco made many donations like this. She did not recall if Kelco contacted the Councilmember's office in regards to any other matters. Ms. Miller asked if Kelco/ISP or other business interests approached Councilmember Inzunza to discuss wastewater rates. She did not remember any discussions relating to the change of wastewater rates.

Ms. Molina-Rodriguez was then shown an ordinance dated November 19, 2001, whereby the City accepted State Revolving Fund Loan Program ("SRF") contracts (Exhibit 3). Ms. Miller asked if Ms. Molina-Rodriguez recalled this ordinance, and she replied that she did not. Ms. Miller asked about the process Councilmember Inzunza would have gone through to educate himself on the contracts before a vote. She believed that this would likely have been handled like any other docket item and briefed to the Councilmember the Monday before the vote, though it was not Councilmember Inzunza's practice to read the actual contracts. Ms. Miller asked her about Councilmember Inzunza's educational background and she replied that he was a political science major and got a Master's degree from San Diego State University, but she was unaware of any additional financial training he might have received.

Ms. Molina-Rodriguez was shown handwritten notes on a Council meeting agenda, dated October 16, 2001 (Exhibit 4). She did not recognize the handwriting on this document.

Ms. Miller asked Ms. Molina-Rodriguez if she was aware of issues relating to Proposition 218, and she replied that she was not. She suggested that it was possible that the City Attorney's Office informed Councilmember Inzunza about these issues, but she was not certain because these discussions would have been held in Closed Session. Ms. Molina-Rodriguez would not regularly call the City Attorney's Office regarding items up for vote, but did call often to ask whether it was appropriate to accept certain gifts. Ms. Molina-Rodriguez stated that she kept legal advice memos in a binder which is now in the possession of the City Clerk. Ms. Miller asked if Councilmember Inzunza ever contacted the City Attorney's Office to acquire legal advice about an upcoming vote. Ms. Molina-Rodriguez replied that he once requested legal advice from the City Attorney's Office regarding whether he could vote on matters affecting San Diego Gas & Electric, a company he worked for before entering office. He may have requested advice on other votes, but Ms. Molina-Rodriguez did not recall any others specifically. When he did request advice, Councilmember Inzunza would email the City Attorney's Office and ask for the opinion in writing. Lisa Foster was the "go-to" person in the City Attorney's Office when Council members needed advice. Ms. Molina-Rodriguez did not know whether Ms. Foster attended any meetings with the Councilmember's staff.

Ms. Miller then asked if she would ever go to another Councilmember's office to acquire information about policy issues. Ms. Molina-Rodriguez replied that she and other staff would occasionally go to other Council members' offices for information regarding policy issues and would also call other City departments to request this information.

Disclosure

Ms. Molina-Rodriguez was shown a memorandum dated November 6, 2001, from Deputy City Attorney Les Girard to the City Council regarding the Council's responsibility for the accuracy of the City's disclosure documents (Exhibit 5). Ms. Molina-Rodriguez did not remember having seen this document, but remembered Mr. Henderson suing regarding the

Ballpark financing. Ms. Miller asked if she was involved in briefing Councilmember Inzunza on the Ballpark financing. She responded that Hiro Suzuki and Pat Schott, both staff to Councilmember Inzunza, briefed him on this issue. Ms. Molina-Rodriguez did not brief him on disclosure matters, and did not remember if he ever met with the Financial Services Department on this issue. Ms. Miller asked if she recalled training meetings with Bryan Cave, and she responded that she did not recall any such meetings. Ms. Miller asked if Councilmember Inzunza had a financial background, and she replied that she did not think he did.

Conclusion

Mr. Turetsky asked whether Ms. Molina-Rodriguez complied with the document requests in the "Mayor-Manager Memo," and she replied that she had. Ms. Molina-Rodriguez explained that when Pat Schott had left for Washington, D.C., in the middle of 2004, his documents were stored with all other documents that the office saved. All the records generated in the Councilmember's office were stored electronically and handed over to the City Clerk at the end of the term.

WF&G

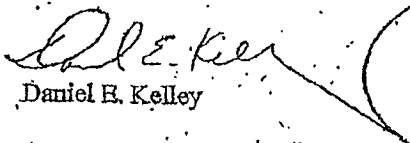
3241751

EXHIBIT 1

CITY OF SAN DIEGO
MEMORANDUM

DATE: March 15, 2002
TO: Honorable Mayor and City Council
FROM: Daniel E. Kelley, Labor Relations Manager
SUBJECT: Closed Session Meet and Confer Materials for March 18, 2002

Attached is the Closed Session meet and confer Powerpoint outline for the extended 9 a.m. to 12 p.m. meeting on Monday, March 18, 2002.


Daniel E. Kelley

Attachment

EXHIBIT # 42

CAR01993

Meet & Confer 2002

Retirement System and Meet & Confer

- The System's Actuary performs an annual "valuation which tests certain "assumptions" against actual experience:
- Investment return (earnings)
- Employee withdrawals prior to vesting.
- Mortality rates
- Disability rates
- Pay increases
- Age at retirement
- Others

51

Meet & Confer 2002

Retirement System and Meet & Confer

An annual "*actuarial valuation*" measures the funding status of the system (actuarially computed present value of future retirement liabilities")

FY96 = 91.4%

FY97 = 93.3%

FY98 = 93.6%

FY99 = 93.2%

FY00 = 97.3%

FY01 = 89.9%

52

CAR01994

Meet & Confer 2002

Employer Contribution Rate Stabilization Plan

Period	PUC Rate	Actual Rate	City Paid Rate	Difference %	Difference \$	Earnings
FY96	8.60%	8.60%	7.08%	1.52%	\$5.33m	\$150.4m
FY97	10.87%	9.55%	7.33%	3.79%	\$13.88m	\$137.4m
FY98	12.18%*Est	10.87%	7.83%	4.35%	\$16.67m	\$247.4m
FY99	12.18%*Est	10.86%	8.33%	3.85%	\$15.40m	\$189.1m
FY2000	12.18%*Est	11.48%	8.83%	3.35%	\$14.00m	\$415.9m
FY2001	12.18%*Est	11.96%	9.33%	2.85%	\$12.45m	\$168.0m
FY2002	12.18%*Est	12.58%	9.83%	2.35%	\$10.72m	\$2.0m est
FY2003	12.18%*Est	15.59%	10.33%	1.85%	\$8.82m	
FY2004	12.18%*Est		10.83%	1.35%	\$6.73m	
FY2005	12.18%*Est		11.33%	.85%	\$4.43m	
FY2006	12.18%*Est		11.83%	.35%	\$1.91m	
FY2007	12.18%*Est		12.18%	-0-	-0-	
FY2008	13.00%*		13.00%	-0-	-0-	
TOTAL					\$110.35	

Meet & Confer 2002

Retirement System and Meet & Confer

The "Manager's Proposal" effective 1/97:

Earnings Compared with Funding Ratio

FY96	\$150.4 m	91.4%
FY97	\$137.4 m	93.3%
FY98	\$247.4 m	93.6%
FY99	\$189.1 m	93.2%
FY00	\$415.9 m	97.3%
FY01	\$168.0 m	89.9%
FY02 Est.	\$50 to \$60 m	?

➤ \$105 m reserve would drop to = 85.6%

➤ Corbett, if amortized = 83.1%

➤ "Trigger" in Manager's Proposal requiring City to pay full rate = 82.3%
(a potential \$40m annual impact)

Meet & Confer 2002

Retirement System and Meet & Confer

- Retirement enhancements have been funded
 - By increasing City and employee contributions, and/or
 - By absorbing as a future liability of the Retirement System
- Given recent actuarial losses of the System, any consideration to absorb costs must carefully evaluate impact on System's funding ratio

67

Meet & Confer 2002

Action

Recommendations For Active Employee Plans:

1. Authorize renewals at premiums shown earlier with PacifiCare and Kaiser
2. Authorize modified co-pays by employees that standardize plan designs for PacifiCare (Option 1) and Kaiser (Option 2) HMO plans in line with industry standard:

\$10 office visit co-pays by employees
\$5 generic/\$10 brand Rx with formulary
\$50 emergency room co-payment

68

Council
Stevens
Joyce
Argueta
Man
Alkin
Peter
Wane
Mayer
8-0

EXHIBIT 2

From: LChapin
Sent: Friday, November 01, 2002 4:33 PM
To: LGrissom; PLane; RParks; VHayes
Cc: PBarnett
Subject: Re: Fwd: Reduction in the allowance of Legislative Officers Retired at age less than 55

I am uncomfortable changing any process without a reason to do so. Is there a problem with the way we currently do the 2% reduction? I admit this is not my area of expertise. That said I still don't get it. Why should we be doing something other than what we are doing?

Lori

>>> Vincent Hayes 11/01/02 05:16PM >>>

If I understand what Judy said. It will increase the officials benefit. It would reduce the retirement formula amount by 2% and reduce the reduced amount by 2% and reduce the reduced amount by 2%, etc. We would have to do a calculation for each year under 55 instead of reducing the calculated benefit by 2% and multiplying by the number of years under 55. It is basically a benefit enhancement.

>>> Loraine Chapin 11/1/02 9:17:21 AM >>>

I do not know. Dan Kelly called me and indicated the Auditor's Office had raised the issue. I told him I was not the person to decide and that I would forward to you, Patrick, Roxanne, Larry and Paul. I have not reviewed the details. I too will confess my ignorance. How is this different from what we do now? I know we are all in so many meetings and so busy, but, perhaps this warrants a meeting of the minds. I know we had issues with the calculation of the 2% reduction generally in the past. I believe it arose with Chris Kehoe.

Lori

>>> Vincent Hayes 11/01/02 07:54AM >>>

I am going to show my ignorance, but why would we want to do something like that? Help me understand. Who is behind this?

>>> "Loraine Chapin" <L.Chapin@sandiego.gov> 10/30/02 5:05:00 PM >>>
Hello all,

See attached. Can this be done? Do we want to do it?

Lori

LGE00073358

SDCERS_PRIVILEGE001259

From: LChapin
Sent: Wednesday, October 30, 2002 4:05 PM
To: LGrissom; PLane; RParks; VDH; VHayes
Cc: PBarnett
Subject: Fwd: Reduction in the allowance of Legislative Officers Retired at age less than 55
Attachments: Mime.822; Fwd: Reduction in the allowance of Legislative Officers Retired at age less than 55

Hello all,

See attached. Can this be done? Do we want to do it?

Loni

1/14/2005

LGE00073357

SDCERS_PRIVILEGE001257

From: DKelley

Sent: Wednesday, October 30, 2002 3:46 PM

Subject: Fwd: Reduction in the allowance of Legislative Officers Retired at age less than 55

As a followup to our discussion, can we accomplish the attached without a Muni Code change?

Dan

1/14/2005

LGE00015389

SDCERS_PRIVILEGE001258

PENSION_M0000045

From: LChapin
Sent: Wednesday, October 30, 2002 4:05 PM
To: VDH@SDCITY.SANNET.gov; LGrissom; PLane; RParks
Cc: PBarnett
Subject: Fwd: Reduction in the allowance of Legislative Officers Retired at age less than 55

Hello all,

See attached. Can this be done? Do we want to do it?

Lori



Fwd: Reduction in
the allowanc...

EXHIBIT 3

From: LChapin
Sent: Wednesday, October 30, 2002 4:23 PM
To: LGrissom
Cc: PBarnett
Subject: Re: Fwd: Reduction in the allowance of Legislative Officers Retired at age less than 55

You are probably right. I question if a code amendment is needed. The Code merely provides the opportunity to take an earlier retirement with a 2% reduction. The manner in which it is calculated is an internal procedure. I wouldn't even put it in a rule because this is way to much detail. I recall issues in the past (Kehoe?) with this. I thought it may be Inzuna or Wear... I thought you might have had some sort of advance warning. Since I didn't know what was behind this or the chapter and verse of our past practice I told Dan when he called me about this that I would forward to Retirement Staff.

Isn't life grand???

>>> Lawrence Grissom 10/30/02 05:14PM >>>
Lori

My first question is what the @#@ initiated this? As Judy's memo states, she has talked to no one here about this. Yeah, we could probably change the Code to reflect what they are talking about --- that's up to them. But I suspect that someone is whining and wants a retro adjustment based on the change, and I have a lot of problem with that. Altho thinking about it, since she cited the Code section referring to Council members with 7 rather than 8 years of service -- the special provision for those with the short term -- she may be talking about my buddy Inzunza. Larry

>>> Loraine Chapin 10/30/02 05:05PM >>>
Hello all,

See attached. Can this be done? Do we want to do it?

Lori

From: Lawrence Grissom
Sent: Wednesday, October 30, 2002 4:14 PM
To: LChapin
Subject: Re. Fwd: Reduction in the allowance of Legislative Officers Retired at age less than 55

Loni

My first question is what the @##@ initiated this? As Judy's memo states, she has talked to no one here about this. Yeah, we could probably change the Code to reflect what they are talking about that's up to them. But I suspect that someone is whining and wants a retro adjustment based on the change, and I have a lot of problem with that.

Altho thinking about it, since she cited the Code section referring to Council members with 7 rather than 8 years of service the special provision for those with the short term she may be talking about my buddy Inzunza.

Larry

>>> Loraine Chapin 10/30/02 05:05PM >>>
Hello all,

See attached. Can this be done? Do we want to do it?

Loni

6/22/2004

36431

SDCERS Non Priv ADI 04166

CHARLES G. ANDERSON, Clerk of
the City of San Diego, California,
hereby certifies that this is a true
copy of reports on file and of
record in the office of the Clerk
of said City.

CHARLES G. ANDERSON, City Clerk
By *James H. [Signature]*
Date *12-11-01* Deputy

Attachment F
App'd DEDICATED SOURCE
of REVENUE RESORTS

(O-2002-40)

ORDINANCE NUMBER 19012 (NEW SERIES)

ADOPTED ON NOV 19 2001

AN ORDINANCE PURSUANT TO SAN DIEGO CHARTER
SECTION 99 AUTHORIZING AND ACCEPTING STATE
REVOLVING FUND LOAN PROGRAM CONTRACTS

WHEREAS, on March 17, 1997, the San Diego City Council adopted Resolution Number R-288425, authorizing the City Manager or, at his designation, the Metropolitan Wastewater Department Director or Assistant Director, to conduct all negotiations and submit all documents necessary to apply for and obtain loans from the State Water Resources Control Board [SWRCB] for the construction of wastewater infrastructure, pursuant to the SWRCB State Revolving Fund [SRF] Loan Program; and

WHEREAS, the City Manager and Metropolitan Wastewater Department Director have accordingly applied to the SWRCB and qualified the City to receive twenty-year zero percent interest SRF loans; and

WHEREAS, on June 21, 1999, the City Council adopted Ordinance No. O-18655; on February 22, 2000 adopted Ordinance No. O-18781; and on December 5, 2000 adopted Ordinance No. O-18903, which authorized the specified projects for specified SRF loans; and

WHEREAS, as a condition of making such loans, the SWRCB requires the recipient to certify a dedicated source of revenue for repayment of the loans; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, that the City Manager and his duly designated representative, the Senior Deputy City Manager, are hereby authorized to

apply for, enter into, conduct all negotiations for, and execute and comply with all loan requirements regarding matching funding to fund zero-interest SRF loans, provided that the City Auditor and Comptroller first furnishes one or more certificates demonstrating that the necessary matching funds are, or will be, on deposit in the City Treasury.

BE IT FURTHER ORDAINED, that the City Manager or his duly authorized representative are hereby authorized to enter into specified SRF loans in the specified sums for the following projects:

1. Otay River Pump Station & Conveyance Project, CIP No. 41-924.0, in an amount not to exceed \$11,500,000 and pursuant to terms and conditions set forth in the form of the documents on file in the office of the San Diego City Clerk as Document Number OO- 19012-1
2. Environmental Monitoring & Technical Services Laboratory, Phase 1, CIP No. 46-187.0, in an amount not to exceed \$13,130,000 and pursuant to the terms and conditions set forth in the form of the documents on file in the office of the City Clerk as Document Number OO- 19012-2

BE IT FURTHER ORDAINED, that the Net System Revenues (as defined in the Master Installment Purchase Agreement, dated as of September 1, 1993, between the City and the Public Facilities Financing Authority of the City of San Diego, as originally executed and as it may from time to time be amended or supplemented in accordance with the provisions thereof), are hereby designated as the dedicated source of funds for repayment of the above SRF loans made by the SWRCB, and shall remain so until such time as the loans are fully repaid, unless change of such dedication is approved by the SWRCB.

BE IT FURTHER ORDAINED, that consistent with the authority granted by Resolution No. R-288425, the City Manager or the Senior Deputy City Manager may execute the documents for the loans accepted by this ordinance.

-PAGE 2 OF 3-

SWRCB0276

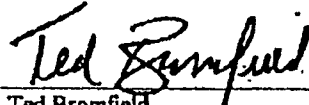
6-30-05 COS SEC Subpoena

BE IT FURTHER ORDAINED, that a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

BE IT FURTHER ORDAINED, that this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By



Ted Bromfield
Senior Deputy City Attorney

TB:mb
10/16/01
Aud.Cert:N/A
Or.Dept:MWWD
MWD-2024
O-2002-40
Form=o&t.frm

-PAGE 3 OF 3-

SWRCB0277

6-30-05 COS SEC Subpoena

Passed and adopted by the Council of The City of San Diego on NOV 19 2001
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Byron Wear	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George Stevens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maisenschien	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ralph Inzunza	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

By: Esther Kanner, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 05 2001

NOV 19 2001

and on

I ~~FURTHER CERTIFY~~ that said ordinance was read in full prior to its final passage.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By: Esther Kanner, Deputy.

This information is available in alternative formats upon request.

CC-1233-A (Rev. 11-99)

Office of the City Clerk, San Diego, California

Ordinance Number 19012

Adopted NOV 19 2001

SWRCB0278

6-30-05 COS SEC Subpoena

EXHIBIT 4

REGULAR COUNCIL MEETING OF TUESDAY, OCTOBER 16, 2001, 10:00 A.M.

ROLL CALL

NON-AGENDA PUBLIC COMMENT

COUNCIL, CITY ATTORNEY, AND CITY MANAGER COMMENT

REQUESTS FOR CONTINUANCES, RETURNING OR TRAILING ITEMS FROM THE CITY MANAGER

Note: At the meeting of 9/18/2001, Item-312, the City Council granted the request for reconsideration from their decision of 7/31/2001. Previous actions include the following: approved at the meeting of 7/31/2001; continued from the meeting of 6/26/2001, Item-330 at the request of the City Manager for further review; continued from the meeting of 4/17/2001, Item-332, at the request of Council Member Peters to allow for the time necessary to do a site specific health risk assessment.

#322 Request to be continued
to October 30, 2001

(Actions regarding Chevron Gas Station-Sorrento Hills.) Dist. 1

A continuation of this item to October 30th will allow Dr. Langerman, the independent expert, to be present to provide testimony and respond to questions. Members of the community have been notified of the continuance. APCD will also be in attendance on October 30th.

REQUESTS FOR CONTINUANCES, RETURNING OR TRAILING ITEMS FROM COUNCILMEMBERS

REQUESTS FOR CONTINUANCES FROM THE PUBLIC

HEARINGS SET FOR 10:00 A.M.

#330 Robert Korch
Project Manager
Development Services

(Actions regarding Hollywood and Vine.) Dist. 1

TM, Street Vacation
PRD 4 RPO

This item requests approval of a 9 lot subdivision consisting of two non contiguous parcels totaling 6.67 acres in the Del Mar Mesa subarea. The smaller 1.98 acre parcel will become permanent open space with the density transferred to the larger site. The 4.69 acre parcel will be subdivided into 6 single family lots, an open space lot and a lot for a water booster pump. The Planning Commission and Del Mar Mesa Community Planning Board both overwhelming approved the project.

generals 60 ADT - continues 23 trips to IS

#331 Adolfo Aguilar
Project Manager

(Action regarding Vacation of a portion of Peplita Way.) Dist. 1

*CM
Casey
School
Conservation
arr. 10/18/01
referenced
area
concerns
impaired
waterbody
PRD -
minutes
added*

Development Services

Council is requested to vacate a portion of Pepita Way in District 1 in order that the applicant can build a concrete wall. The vacation will bring the properties along this portion of the street up to the new City standard of 10 feet curb to property line. The La Jolla Community Planning Association unanimously recommended approval.

#333 Scott Tulloch
Director
MWWD

(Action regarding Sewer Service Charges.)

Noted under Prop 218
but Ted feels not Prop 218

Chen wants 1/2 increase to go to \$100

Doug Sarin says spend down funds in

CONVENE THE SPECIAL JOINT MEETING TO MEET SIMULTANEOUSLY WITH
THE REDEVELOPMENT AGENCY

rate 5661.
for sewer
and sewer.

Council Item

Note: Companion to Redevelopment Agency #1.

#601 Benjamin Hueso
Project Manager
Comm & Econ Development

(Actions regarding Disposition and Development Agreement (DDA) with Chuey's Restaurant - Barrio Logan Redevelopment Project.) Dist. 8

This is a commodity charge
versus a property charge but
Attorney

Redevelopment Item

Note: Companion to Council Item-601.

#1 Benjamin Hueso
Project Manager
Comm & Econ Development

(Actions regarding Proposed Disposition and Development Agreement (DDA) with Chuey's Restaurant - Barrio Logan Redevelopment Project.)

This item requests approval of a Disposition and Development Agreement for the development of Chuey's restaurant in the Barrio Logan Project area.

Issues: The processing of this project is being accelerated at the request of CM Inzunza. Chuey's was initially displaced by the widening of Crosby Street. The restaurant is now on a month to month lease in their current location, with all indications that they will need to move out by next summer. The business will close if a new location is not found by that time. Several Council offices and the community support the restaurant which has been an important part of the community for 40 years.

There may be questions regarding the financial aspects of this DDA. The City has spent close to \$1.8 million for the acquisition of this parcel (\$850,000 for the land and close to \$1,000,000 in costs for condemnation, business relocation, etc.). The sale price in this transaction is \$400,000. - deferred purchase price
A current appraisal for the property is not available at this point. Staff point out that the parcel has been vacant for several years and no viable project proposals have been received to date.

The environmental review for the site has not been completed. There is some possibility that an earthquake fault could impact this site. The DDA indicates the City will deliver a buildable site for development.

ADJOURN THE SPECIAL JOINT MEETING WITH THE REDEVELOPMENT AGENCY

CONVENE AS THE HOUSING AUTHORITY

Roll Call

REQUESTS FOR CONTINUANCES, RETURNING OR TRAILING ITEMS FROM THE EXECUTIVE DIRECTOR

#2 Request to be returned to the Executive Director

(Action regarding Authorization to apply for a Public Housing Authority Evaluation from Standard & Poor's.) Citywide

Housing Commission staff request this item be returned to allow them additional time to ensure they are prepared for the Standard and Poor's evaluation.

Non-agenda Comment

#1 Chair Murphy

(Approval of the minutes of the meeting of September 18, 2001.)

Discussion Agenda

#3 Betsy Morris
CEO
Housing Commission

(Action regarding Owner Occupied Housing Rehabilitation Policy Revisions.) Citywide

This item includes three changes to the Owner Occupied Housing Rehabilitation Policy in order to broaden eligibility and increase participation:

1. Increase the cap on the No-Interest deferred loan program for single family rehabilitation from \$5000 to \$10000 and increase the income eligibility from 50% median area income to 60%.
2. Increase the cap on the Mobile Home Repair Grant from \$3000 to \$3500 and increase the income eligibility from 50% median area income to 60%.
3. Revise the loan terms for owner-occupied housing rehabilitation loans exceeding \$45,000 (single unit) and \$100,000 (2-4 units) from 3% simple interest to a shared equity no interest deferred loan arrangement requiring repayment of loan principal and a diminishing share of the equity up to fifteen years after the loan date.

ADJOURN AS THE HOUSING AUTHORITY

EXHIBIT 5

ATTORNEY TO CLIENT
CORRESPONDENCE
FOR CONFIDENTIAL USE ONLY

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: November 6, 2001
TO: Honorable Mayor and Members of the City Council
FROM: Leslie J. Girard, Assistant City Attorney
SUBJECT: Furgatch v. San Diego Unified Port District, et al., Court of Appeal D035842;
City, et al. v. All Persons Interested, et al., San Diego Superior GIC 763487;
Dunkl v. City, et al., U.S. Supreme Court No. 01-136; Skane v. City, et al., San
Diego Superior GIC 752505; and anticipated litigation matter: Henderson v. City

In closed session we will be discussing with you your responsibilities regarding the consideration of the Preliminary Official Statement for the City's ballpark bonds. Our outside counsel, Gerald Boltz and Matt Anhut of Bryan Cave LLP, along with the City's bond counsel, Paul Webber of Orrick Herrington & Sutcliffe LLP, will be discussing these matters with you. Enclosed, for your review prior to the closed session, is a memorandum from Mr. Boltz and Mr. Anhut that generally outlines federal securities laws on this subject.

Enclosure

CAR00453

ST. LOUIS, MISSOURI
WASHINGTON, D.C.
NEW YORK, NEW YORK
KANSAS CITY, MISSOURI
OVERLAND PARK, KANSAS
PHOENIX, ARIZONA
IRVINE, CALIFORNIA

BRYAN CAVE LLP.

120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2305
(310) 576-2100
FACSIMILE: (310) 576-2200

RIYADH, SAUDI ARABIA
KUWAIT CITY, KUWAIT
ABU DHABI, UNITED ARAB EMIRATES
DUBAI, UNITED ARAB EMIRATES
HONG KONG
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA
IN ASSOCIATION WITH BRYAN CAVE,
A MULTINATIONAL PARTNERSHIP,
LONDON, ENGLAND

GERALD E. BOLTZ
DIRECT DIAL NUMBER
(310) 576-2134

MATTHEW D. ANHUT
DIRECT DIAL NUMBER
(310) 576-2144

INTERNET ADDRESS
GEBOLTZ@BRYANCAVE.COM

INTERNET ADDRESS
MDANHUT@BRYANCAVE.COM

October 29, 2001

Leslie J. Girard, Esq.
Assistant City Attorney
City of San Diego
Civil Division - Special Projects
1200 Third Avenue, Suite 1620
San Diego, CA 92101

Privileged and Confidential
Attorney-Client Communication

Re: Review of Disclosure Documents as to Lease Revenue Bonds 2001

Dear Les:

We are writing this letter to provide an overview of the applicable federal securities laws and to provide a framework against which the City Council for the City of San Diego ("City Council") and the Board of Commissioners of the Public Facility Financing Authority of the City of San Diego ("Board of Commissioners") must review and evaluate the Preliminary Official Statement ("POS"), and the Official Statement when completed, prepared in anticipation of the offering of the Lease Revenue Bonds 2001 ("2001 Bonds"). As noted in the POS, the purpose of the bond offering is to finance the construction of a major league baseball park in San Diego, as well as other uses (as described in the POS) relating to the ballpark project (the "Ballpark Project"). In this letter we will not recount the lengthy history relating to the Ballpark Project and the numerous related legal challenges and actions, except to note, however, that in a letter dated September 20, 2001, to the City Attorney, the lawyer who has been the driving force behind various pieces of litigation relating to the Ballpark Project has contended that, because of various changes and alterations, the Ballpark Project should be re-submitted to the voters of San Diego for approval (the "September Letter").

In light of the application of provisions of the federal securities laws, and in particular the obligations imposed on issuers in connection the offering and sale of securities (as described below), and the allegations made in the September Letter, each member of the City Council and the Board of Commissioners must read the POS (and when completed the Official Statement), ask questions as to any area or matter that may seem unclear or need clarification, actively seek

425784.02

CAR00454

BRYAN CAVE LLP

Leslie J. Girard, Esq.
October 29, 2001
Page 2

information from the officials of the City or Authority and professionals retained in connection with the proposed offering, and conduct follow-up as to the information supplied.

Overview of the Applicable Federal Securities Laws

While Congress exempted offerings of municipal securities, such as the 2001 Bonds, from the registration requirements of the Securities Act of 1933, and the system of periodic reporting under the Securities Exchange Act of 1934, it did not exempt transactions in municipal securities from the antifraud provisions of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder. These provisions prohibit any person, including municipal issuers, from making a false or misleading statement of material fact, or omitting any material facts necessary to make statements made by that person not misleading, in connection with the offer, purchase or sale of any security. In the event of a violation of the securities provisions, the SEC has a range of remedies at its disposal, including the authority to seek injunctive relief to stop (in extraordinary circumstances) the offer or sale of securities and the imposition of penalties (which include monetary fines and the placement of limitations on securities related activities). In addition, there is typically a substantial amount of negative publicity that arises in connection with an SEC proceeding.

Although as to certain antifraud provisions, the SEC must show that the person acted with "scienter" — that is recklessness or an intent to deceive, manipulate, or defraud — the SEC need only demonstrate that the person acted negligently to establish a violation of other antifraud provisions. To establish negligence, the SEC must show that the defendants failed to conform with the standard of care that a reasonable person would have exercised in like circumstances and position. Of course, there must first be a misstatement or omission of a material fact; however, the lower threshold of negligence provides greater enforcement flexibility to the SEC.

In light of the foregoing, it is critical that the City Council and the Board of Commissioners exercise all due care in reviewing and evaluating the information contained in the POS. As to that information, the statements in the POS "must be viewed as part of a 'mosaic' to see if those statements, in the aggregate, created a misleading impression. . . . The proper test is not the literal truth or the materiality of each positive statement, but the overall misleading impression that it combines to create." *In re Genentech, Inc., Securities Litigation*, 1989, Fed. Sec. L. Rep. (CCH) ¶94, 544 (N.D. Cal. 1989). Moreover, a fact is deemed "material" if there is a " . . . substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable [investor]. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

CAR00455

Leslie J. Girard, Esq.

October 29, 2001

Page 3

Unfortunately, in the event that there is a challenge to the adequacy of a disclosure document, such challenge occurs with the benefit of hindsight. While it is not appropriate to apply hindsight, as a practical matter it is sometimes difficult to disregard subsequent events, and the impact of those events, in placing the disclosure in the proper context of what had occurred as of the time that the document was created.

The importance of the review of municipal securities disclosure documents was highlighted in connection with an SEC report that was critical of the supervisors of Orange County, California for shortcomings relating to their review of such documents. *Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors*, Exchange Act Release No. 36761 (January 24, 1996). As stated by the SEC in the Orange County matter:

In authorizing the issuance of securities and related disclosure documents, a public official may not authorize disclosure that the official knows to be false; nor may a public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading. When, for example, a public official has knowledge of facts bringing into question the issuer's ability to repay the securities, it is reckless for that official to approve disclosure to investors without taking steps appropriate under the circumstances to prevent the dissemination of materially false or misleading information regarding those facts. In this matter, such steps could have included becoming familiar with the disclosure documents and questioning the issuer's officials, employees or other agents about the disclosure of those facts.

Id. (emphasis added).

The message communicated by the statements of the SEC in the foregoing report is that members of the body approving disclosure documents cannot simply "rubber-stamp" the document. Rather, each member has the responsibility to demonstrate that he or she was actively involved in the process -- that is, each person must review the disclosure document, inquire as to the source of the information, ask questions of the City officials and other professionals who provided information (as well as ask if there are other sources of information that should be reviewed), and follow-up to ascertain whether the information makes sense in the circumstances. In short, the members of the City Council and the Board of Commissioners must demonstrate that they have satisfied themselves, after diligent inquiry that all material facts have been accurately disclosed, that the POS is not misleading.

Application of the Provisions of Federal Securities Laws to the POS

As discussed above, the primary consideration in regard to the POS is that it not contain a misstatement as to a material fact or omit to state any fact that is necessary so as to make the

CAR00456

BRYAN CAVE LLP

Leslie J. Girard, Esq.
October 29, 2001
Page 4

statements contained therein not misleading. This standard does not mean that the members of the City Council and the Board of Commissioners cannot rely on the professionals and City officials who have supplied information to be included in the POS. What it does mean, however, is that the members of the City Council and the Board of Commissioners act with reasonable care. This includes, at a minimum: (1) reviewing the entire POS; (2) asking for clarification as to material parts of the POS that a member may need additional guidance; (3) seeking information and asking questions of the officials, employees, and professionals who supplied information to be included in the POS; and (4) asking follow up questions to determine the reasonableness of any assumptions or estimates that were used in the POS. Although significant efforts have been expended to make the information in the POS accurate and understandable, the members of the City Council and the Board of Commissioners should not be hesitant to inquire as to any area that might not be entirely clear.

Also, in light of prior challenges to the Ballpark Project, it is prudent that the City Council make certain that there are no additional disclosure issues that need to be addressed. In particular, the City Council should document whether there is any potential conflict of interest -- whether through a business or financial relationship or transaction -- that might need to be disclosed. In this regard, we recommend that the City Council document that each member has not received anything of value from the Padres, any affiliate of the Padres, or any other person or entity that has a material interest in either the Ballpark Project or the proposed offering of the 2001 Bonds. (Such persons include: Padres, L.P.; Padres Construction, L.P.; Mr. John Moores; JMI Realty, Inc.; JMIR - Downtown Acquisition, LLC; San Diego Ballpark Builders; Clark Construction Group, Inc.; Nielsen Dillingham Builders; Douglas E. Barnhart, Inc.; Hines Interests Limited Partnership; Major League Baseball; Ambac Assurance Corporation; Wells Fargo Corporate Trust; HOK Sports; Merrill Lynch & Co., Inc.; Morgan Stanley & Co., Inc.; I.C. Rideau Lyons & Co.; Redwood Securities Group.)

From the perspective of the securities laws, no precise criteria can be established as to the level or range of financial and business relationships, arrangements and practices that might be problematic. The better practice is to ensure that there is no potential conflict in the first instance by requesting and obtaining written confirmation from each member that he or she did not have any business or financial dealings with any person who might be interested in the Ballpark Project or the 2001 Bond offering.

Finally, the City Council should, as part of its review, address the allegations made in the September Letter. In particular, in the September Letter, the lawyer asserts that changes in the financing and revenue assumptions relating to the Ballpark Project and the ancillary development; the increase in the financial participation by the Redevelopment Agency, the reliance by the City on other revenue sources for the Ballpark Project, any amendments to the MOU, and the change in the scope of the ancillary development mandate that the project again be submitted to the voters of the City for approval. Further, and notwithstanding that the POS had

CAR00457

BRYAN CAVE, LLP

Leslie J. Girard, Esq.

October 29, 2001

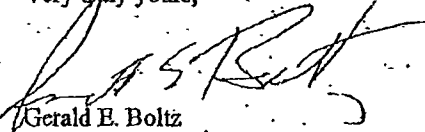
Page 5

not been completed or released prior to the date of his letter, the lawyer stated that matters might be "omitted or misstated in the [POS]."

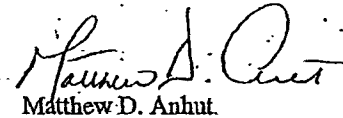
In regard to the allegations made by in the September Letter, portions of the POS relating to the Plan of Financing, the Redevelopment Project, the Risk Factors and Litigation should receive additional attention on review by the City Council and the Board of Commissioners. In particular, the lawyer asserts that the transient occupancy tax and tax increment to be generated from the hotels, office space and other development around the Ballpark Project will not be sufficient to pay for the City's contribution to the Ballpark Project. While the assertion rests upon the assumption that specific revenues were pledged for the project, the allegations highlight the importance of reviewing the financial projections and assumptions underlying the City's commitment and resources available to repay the bonds. In that regard, the members of the City Council and the Board of Commissioners should make use of the resources available through City officials in determining whether any of the assertions warrant further attention.

Although there can be no prediction of what future actions might be brought relating to the Ballpark Project or the offering of the 2001 Bonds, a thorough and careful review of the POS by the members of the City Council and the Board of Commissioners will provide a solid foundation to support any response to -- and hopefully summarily conclude -- potential, future challenges.

Very truly yours,



Gerald E. Boltz



Matthew D. Anhut

CAR00458

**ATTORNEY TO CLIENT
CORRESPONDENCE
FOR CONFIDENTIAL USE ONLY**

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: October 23, 2001
TO: Honorable Mayor and Members of the City Council
FROM: Leslie J. Girard, Assistant City Attorney
SUBJECT: Potential Litigation: Henderson v. City

You may recall that Bruce Henderson recently sent a letter to the City Attorney setting forth numerous complaints about the Ballpark Project [Project]. In that letter, a copy of which is attached, he threatens either further litigation or a complaint to the Securities and Exchange Commission [SEC] regarding the potential Preliminary Official Statement [POS] for the City's bonds.

In closed session we will discuss with you some of the matters raised in Mr. Henderson's complaint and the impact his continued threats of litigation are having on the Project. Preparing for his inevitable litigation or SEC complaint has delayed the presentation of the POS to the City Council while a number of matters are addressed. These matters include: 1) the need for a further extension of the MOU; 2) the need for an agreement from Major League Baseball [MLB Guaranty], as a condition of obtaining municipal bond insurance, guarantying a significant portion of the Padres' funding obligation for the Project; and 3) the impact of the delay on the cost of the Ballpark (borne by the Padres) and the financing of the Westin Hotel. The discussion will include a recommendation regarding the treatment of the City's first priority lien and security interest in the Padres' franchise in light of the MLB Guaranty, and a recommendation regarding the length of the necessary extension of the MOU.

CAR00459